



U.S. Department of Justice

Antitrust Division

New York Office

26 Federal Plaza
Room 3630
New York, New York 10278-0004

212/335-8000
FAX 212/335-8023

October 3, 2018

ECF & HAND DELIVERY

Honorable Richard Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: United States v. Richard Usher et al., 17-cr-019 (RMB)

Dear Judge Berman:

The Government submits this letter to inform the Court that it no longer seeks to introduce evidence of import commerce at trial. The Government must prove that Defendants' conspiracy either involved interstate *or* import commerce, or that the conspiracy had a direct, substantial, and reasonably foreseeable effect on U.S. commerce. *See* 15 U.S.C. § 6a. The Government will further prove that Defendants' conspiracy had substantial and intended effects on U.S. commerce. *See Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 796-98 (1993). The Indictment alleges, and the Government could prove at trial, that Defendants' conduct involved and affected import commerce. However, the Government believes such proof is unnecessary to meet its burden and this change will help streamline facts and arguments in the upcoming trial.

The Government's decision has no impact on the scope of the charged crime. An indictment is not amended where the indictment charged the commission of one offense in several ways and withdraws from the jury's consideration one alleged method of committing the offense. *See United States v. Miller*, 471 U.S. 130, 145 (1985). The facts proven at trial will conform to the other two theories contained in the indictment for which Defendants had notice, interstate commerce and direct, substantial, and reasonably foreseeable effects on U.S. commerce. *See id.* at 134-35. The Government has informed Defendants of this change on October 1, 2018.

Accordingly, the Government asks the Court to amend the following jury instructions: Preliminary Instruction 1.13 Elements of the Sherman Act Offense Charged, Final Instruction 3.16 Summary of Indictment, Final Instruction 3.19 Elements of the Sherman Act Offense Charged, and Final Instruction 3.26 Sherman Act Conspiracy Third Element: Commerce.

Respectfully submitted,

/s/ Jeffrey D. Martino

Jeffrey D. Martino

Carrie A. Syme

Bryan C. Bughman

David Chu

Trial Attorneys

Antitrust Division